## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

GAIL M. GILLESPIE, AUDREY F.	§	
GILLESPIE, DARYL GILLESPIE, AND	§	
DELORES FOSTER,	§	
	<b>§</b>	
Plaintiffs,	§	
	§	
VS.	§	Case No. 4:14-cv-00279
	§	
OCWEN LOAN SERVICING, LLC,	§	
	§	
Defendant.	§	

# UNOPPOSED MOTION FOR LEAVE TO FILE COUNTERCLAIM TO THE HONORABLE COURT:

Ocwen Loan Servicing, LLC ("Ocwen"), moves for leave to late file a counterclaim and respectfully states as follows:

- 1. This case concerns the validity of a lien on real property owned by Gail M. Gillespie, Audrey F. Gillespie, and Delores Foster. The lien secures a loan that refinanced a purchase money loan. At the time this lawsuit was filed, Ocwen was the servicer of the loan.
- 2. On June 6, 2014, the Court issued a Scheduling Order providing that January 5, 2015 is the deadline to file Motions for Leave to Amend Pleadings and Join New Parties.
- 3. At the end of December 2014, Ocwen's counsel learned that the servicing rights of the loan had been transferred from Ocwen to a third party. Ocwen's counsel advised plaintiffs' counsel of the transfer and requested that the owner of the note and the

beneficiary of the deed of trust be substituted as the real party in interest. It is the undersigned's understanding that plaintiffs' counsel will file a motion to substitute the real party in interest, DLJ Mortgage Capital, Inc. ("DLJ"), in Ocwen's stead.

- 4. DLJ wishes to assert counterclaims, including a claim that it is equitably subrogated to the original purchase money loan. However, given the juxtaposition of the case, it is not a party to the lawsuit. Moreover, it does not seem appropriate for Ocwen to assert the counterclaim given that it is no longer the servicer.
- 5. Ocwen therefore requests that the Court grant leave for the proper defendant to assert a counterclaim once it is properly joined in this lawsuit. The counterclaim would be asserted after the deadline for amending pleadings, and therefore leave of Court is required.
  - 6. Plaintiffs' counsel has advised that he is unopposed to this motion.

WHEREFORE, Ocwen respectfully requests that the Court grant leave to file counterclaims after the January 5, 2015, deadline and that it have such other and further relief to which it may be entitled.

# Respectfully submitted,

/s/ Timothy M. McDaniel

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#### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served upon the following counsel as indicated below on January 5, 2015.

## **BY E-SERVICE:**

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/s/ Kelly Conklin
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